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July 29, 2005

CERTIFIED MAIL NO. 7004 2510 0002 4549 1626

Mr. Jeff S. Jordan
Supervisory Attorney
Complaints, Examination and Legal Administration
Federal Election Commission
999 E. Street, N.W.
Washington, DC 20463

Re: Mayor Philip L. Capitano
MUR 5670

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2005 AUG 8 10 2:10

Dear Mr. Jordan:

Please let this letter serve as acknowledgment of receipt of your letter dated July 12, 2005 addressed to the Honorable Philip L. Capitano. Enclosed herewith is the "Statement of Designation of Counsel" which has been duly executed by Philip L. Capitano.

Please let this letter serve as our response and request that no action should be taken against Philip L. Capitano in this matter based on the factual and legal material submitted herewith which we submit are relevant to the Commission's analysis of this matter.

BACKGROUND INFORMATION

We would like to direct your attention to the fact that the author of the complaint, Daniel Zimmerman, is the chairman of the political committee which is opposed to both Mayor Philip L. Capitano and Congressman Bobby Jindal.

There are upcoming elections wherein the author of the complaint, Daniel Zimmerman, will select an opponent to run against Mayor Philip L. Capitano and Congressman Bobby Jindal. We submit this background information so that you are aware of the fact that this complaint is politically motivated.

It is my understanding that the complainant, Daniel Zimmerman, did not even attend the luncheon which was hosted by the Kenner Professional Women's Association.

PROCEDURAL OBJECTIONS:

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2 U.S.C. Section 437(g) states, in pertinent part that,

“Any person who believes a violation of this Act or of Chapter 95 or chapter 96 of Title 26 has occurred, may file a complaint with the Commission. Such complaint shall be in writing, signed and sworn to by the person filing such complaint, shall be notarized, and shall be made under penalty of perjury and subject to the provisions of section 1001 of Title 18.” (Emphasis added).

The complaint which was filed in this matter is fatally defective in that it was **not** made “under penalty of perjury and subject to the provisions of Section 1001 of Title 18”. Due to the fact that the requirement that all allegations of the complaint be made subject to the penalty of perjury has not been met, a procedural deficiency exists which should invalidate the complaint.

Furthermore, the Complaint is very vague. It does not make any specific allegations of fact or specific charges to which we can adequately respond.

FACTUAL AND LEGAL OBJECTIONS:

Looking at the submission which was made to the Commission, we find it unclear to what the nature of the complaint is. The specific language contained in the complaint is **“this confirmed in my eyes that the Mayor saw this event as more than just a discussion of health care . . .”** (Emphasis added). This appears to be nothing more than a paranoia by the author of the complaint. He is interposing himself as to the subjective motivation of the Mayor of the City of Kenner in buying a table to an event which is hosted in the City of Kenner to provide for the growth and development of business and professional men and women in the City of Kenner.

The Kenner Professional Women’s Association, as stated in their response has hosted this event for numerous years. For numerous years, the City of Kenner has hosted a table at this event. This would have occurred whether or not Bobby Jindal was a speaker or was he was not a speaker.

As you may or may not be aware, Mr. Jindal was the Health Care guru for the State of Louisiana in the many years prior to his decision to run for public office. He is and remains an expert in the area of health care. He came to speak about health care and did speak about health care.

To be governed by the provisions of the Federal Election Campaign Act, the speech or language used when read as a whole and with limited reference to external events, must be susceptible to no other reasonable interpretation than as exhortation to vote for or against a specific candidate; speech is express for that purpose if its message is unmistakable, unambiguous, and suggestive of only one plausible meaning even if not presented in clearest, most explicit language, speech is “advocacy” if it presents clear plea for action rather than being merely informative, and speech must clearly encourage a vote for or against a candidate rather than some other kind of action.

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Federal Election Comm v. Firgath C.A.9 Cal 1987, 807 F.2d 857 cert. denied 108 S. Ct. 151

We submit that this matter is not governed by the Federal Election Campaign Act because the speech he made at the luncheon was about health care not about electing Bobby Jindal to Congress.

As you are aware, the purpose of the Federal Election Campaign Act is to limit spending in federal election campaigns and to eliminate actual or perceived pernicious influence over candidates for elective office that wealthy individuals or corporations could achieve by financing the political war chests of those candidates. *Orloski Vs. Federal Election Committee* 795 F.2d 156 U.S. App D.C. 111.

We submit that purchasing of a table for eight persons at the Kenner Professional Women's Association luncheon for \$225.00 is not a spending in a federal election campaign. There can this in any way be perceived or construed as an effort to obtain actual or perceived pernicious influence over candidates for elective office. Nor could this be conceivably a financing of a political war chest for a candidate. Thus, this does not fit within the purpose of the Federal Election Campaign Act. This is especially true since it is our understanding that the Kenner Professional Women's Association has stated that no contribution donation or payment was ever given to Bobby Jindal.

We further submit that the payment of \$225.00 to purchase a table for eight at a luncheon is not an "expenditure" as defined in 2 U.S.C.A. section 431(9)(A) due to the fact that it was not a payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for federal office.

If there were any doubt that this cost was not an "expenditure" this doubt would seem to be removed by 2 U.S.C.A. section 431(9)(B)(iii) which provides in relevant part as follows:

"Any communication by any membership organization or corporation to its members, stockholders, or executive or administrative personnel, if such membership organization is not organized primarily for the purpose of influencing the nomination for election, or election of any individual to federal office, except the costs incurred by a membership organization . . . directly attributable to a communication expressly advocating the election or defeat of a clearly identifiable candidate. . ."

This position is supported by the language of Federal Election Commission Advisory Opinion 1996-6.

In the event that these costs were in fact "expenditures" as per the act, then the "expenditures" were de minimus. The cost was only \$225.00. After deducting the cost of eight lunches, that portion of the \$225.00 which was spent which could possibly be allocated to the federal

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candidate is minimal.

Lastly we submit that even if the costs incurred were "expenditures" then they are not "independent expenditures" as defined by 2 U.S.C.A. section 431(17)(A), due to the fact that the event for which they were incurred does not expressly advocate the election or defeat of a clearly identified candidate.

We have enclosed an affidavit in support of this Opposition.

In summary, the complaint alleged in the present matter is both procedurally and factually flawed. It begins by lacking sworn statements of fact made under penalty of perjury and then fails to demonstrate facts which would constitute a violation of federal election law. We submit that this matter is outside the scope of your jurisdiction and that there are no violations of federal law.

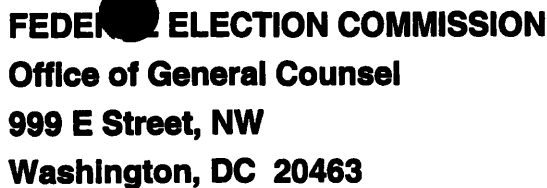
A thorough review of the applicable statutes is very difficult. We are sure that you may have additional reasons why this Complaint should be dismissed which our cursory review of the applicable law has not uncovered. We would appreciate your comments.

We shall be pleased to answer any additional questions that you may have concerning this matter.

Very truly yours,


Michael G. Gaffney

MGG/klc
enclosures



STATEMENT OF DESIGNATION OF COUNSEL
Please use one form for each Respondent/Witness
FAX (202) 219-3923

MUR: 5670

COUNSEL: Michael G. Gaffney

FIRM: Hurndon & Gaffney

ADDRESS: 631 St. Charles Avenue New Orleans, LA 70130

TELEPHONE - OFFICE: (504) 581-3301

FAX: (504) 581-3305

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

Date _____

Signature

Title

RESPONDENT/WITNESS NAME (PRINT): Philip L. Capitano

MAILING ADDRESS: 1801 Williams Blvd.
Kenner, LA 70062

TELEPHONE - HOME: () _____

OFFICE: (504) 468-7240

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation

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AFFIDAVIT

STATE OF LOUISIANA

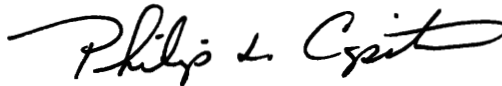
PARISH OF ORLEANS

BEFORE ME, the undersigned Notary Public, personally came and appeared:

PHILIP L. CAPITANO, a resident of the Parish of Jefferson,
State of Louisiana, of the full age of majority,


who, being duly sworn, deposed and said under penalty of perjury, that:

1. I am the duly elected Mayor of the City of Kenner, State of Louisiana.
2. Kenner Professional Women's Association is an excellent, civic minded, and professional association which operates in the city of Kenner. It is not a political organization.
3. The Kenner Professional Women's Association held a luncheon on August 19, 2004 which was the regularly monthly meeting of the Association.
4. The City of Kenner purchased a table for eight people at the luncheon for a sum of \$225.00.
5. Neither the City of Kenner nor the Kenner Professional Women's Association was supporting nor opposing any candidate seeking election to public office.
6. At the luncheon, Bobby Jindal spoke on the subject of health care.
7. Neither Bobby Jindal, the Kenner Professional Women's Association nor the City of Kenner made any effort to solicit support for nor contributions to Bobby Jindal's campaign.
8. The sum of \$225.00 which was paid by the City of Kenner was paid directly to the treasury of the Kenner Professional Women's Association.
9. It is our understanding from the affidavit from the Kenner Professional Women's Association that no contributions, donations, nor payments of any kind were made to the friends of Bobby Jindal or his campaign by the Kenner Professional Women's Association.



PHILIP L. CAPITANO

Sworn to and Subscribed
Before Me, this 1st Day
Of August, 2005.


Print Name: Michael A. Gaffney (Bar # 5868)
NOTARY PUBLIC

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